



## THE PROCESS OF FORMATION AND DEVELOPMENT OF INTERNATIONAL LEGAL REGULATION OF TRADE IN SERVICES BEFORE THE ADOPTION OF THE GATS

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### ABOUT ARTICLE

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**Abstract:** This paper explores the historical formation and evolution of international legal regulation concerning trade in services, culminating in the establishment of the General Agreement on Trade in Services (GATS). Starting with the administrative frameworks of the 19th-century organizations and moving through early intergovernmental treaties, the study traces key initiatives such as the Havana Charter, the activities of UNCTAD, and the rounds of GATT negotiations. It highlights the growing significance of services in global trade, the gradual recognition of the need for specialized legal norms, and the systemic shortcomings of pre-existing frameworks. The Uruguay Round and the eventual creation of the GATS are positioned as pivotal moments that formalized comprehensive, multilateral rules for trade in services. The research underscores the socio-economic implications of service liberalization and the continuing challenges in international regulation.

## XIZMATLAR SAVDOSINI XALQARO HUQUQIY TARTIBGA SOLISHNING SHAKLLANISHI VA RIVOJLANISH JARAYONI GATS QABUL QILINISHIDAN OLDIN

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**MAQOLA HAQIDA**


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**Kalit soʻzlar:** GATS, xalqaro tashkilotlar, evolyutsiya, tartibga solish, Jahon savdo tashkiloti.

**Annotasiya:** Ushbu maqolada xizmatlar savdosiga oid xalqaro huquqiy tartibga solishning tarixiy shakllanishi va rivojlanishi koʻrib chiqiladi. Bu jarayon Xizmatlar savdosi boʻyicha Bosh bitim (GATS)ning yaratilishi bilan yakunlangan. Tadqiqot XIX asr tashkilotlarining maʼmuriy tuzilmalaridan boshlab, ilk hukumatlararo shartnomalar orqali rivojlangan bosqichlarni, xususan, Gavanna Xartiyasi, UNCTAD faoliyati va GATT muzokaralar bosqichlarini oʻrganadi. Xizmatlar sohasining global savdodagi oʻsib borayotgan ahamiyati, maxsus huquqiy normalarga ehtiyojning tobora tan olinishi va mavjud tizimlarning kamchiliklari alohida taʼkidlanadi. Urugvay raundi va GATSning yaratilishi xizmatlar savdosi uchun kompleks, koʻp tomonlama qoidalarni rasmiylashtirgan muhim voqealar sifatida koʻrsatiladi. Tadqiqot xizmatlar sohasini liberallashtirishning ijtimoiy-iqtisodiy oqibatlarini va xalqaro tartibga solishdagi davom etayotgan muammolarni ochib beradi.

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**ПРОЦЕСС ФОРМИРОВАНИЯ И РАЗВИТИЯ МЕЖДУНАРОДНОГО ПРАВОВОГО РЕГУЛИРОВАНИЯ ТОРГОВЛИ УСЛУГАМИ ДО ПРИНЯТИЯ ГАТС**

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**О СТАТЬЕ**


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**Ключевые слова:** ГАТС, международные организации, эволюция, регулирование, Всемирная торговая организация.

**Аннотация:** В данной статье рассматриваются исторические этапы формирования и развития международного правового регулирования торговли услугами, завершившиеся созданием Генерального соглашения по торговле услугами (ГАТС). Начиная с административных структур организаций XIX века и переходя к ранним межправительственным договорам, исследование отслеживает ключевые инициативы, такие как Гаванская хартия, деятельность ЮНКТАД и раунды переговоров в рамках ГАТТ. Особое внимание уделяется возрастанию роли сектора услуг в мировой торговле, постепенному признанию необходимости специальных правовых норм и системным

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недостаткам ранее существовавших механизмов. Уругвайский раунд и последующее принятие ГАТС рассматриваются как поворотные моменты, закрепившие всеобъемлющие многосторонние правила торговли услугами. В исследовании подчеркиваются социально-экономические последствия либерализации услуг и сохраняющиеся вызовы в международном регулировании.

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### **Introduction.**

The regulation of international trade in services has undergone a complex and gradual evolution, reflecting the increasing importance of services within the global economy. Unlike trade in goods, which was governed early on by clear, albeit incomplete, international norms under GATT, trade in services long remained fragmented and largely unregulated at the multilateral level. In the 19th century, organizations like the Universal Telegraph Union and the Universal Postal Union laid the administrative foundations, but substantive regulation only gained momentum in the 20th century with the activities of institutions such as the International Civil Aviation Organization and the Organisation for Economic Co-operation and Development.

The creation of the General Agreement on Tariffs and Trade (GATT) in 1947 marked a turning point, though it initially addressed services only marginally. Efforts by bodies such as UNCTAD and UNCITRAL highlighted the growing need for a comprehensive framework. The Uruguay Round of negotiations (1986–1994) emerged as a critical phase, expanding the scope of international trade law to include services and culminating in the establishment of the World Trade Organization (WTO) and the adoption of GATS.

This paper examines the historical processes, institutional developments, and political dynamics that led to the formulation of GATS. It also analyzes the broader implications of regulating service trade, the challenges faced during its formation, and its significance for the evolution of international economic law. Through this analysis, the paper seeks to contribute to a deeper understanding of how international legal mechanisms evolve in response to changing global economic realities.

Early efforts at regulating trade in services.

In the 19th century, international organizations such as the Universal Telegraph Union (1865) and the Universal Postal Union (1874) were set up to regulate trade in services. However, these organizations had only administrative functions. Later, organisations began to appear in the field of air and maritime transport. For example, the International Civil Aviation Organisation (ICAO) started its activities in 1944. For a long time, only intersectoral intergovernmental treaties

existed due to the specific nature of the services market. The first attempts to develop uniform rules and principles for international trade in services were made in the late 1940s. They were part of the preparations for the creation of the International Trade Organisation (ITO). Activities to establish this organization were carried out under the auspices of the UN Economic and Social Council. The future ITO Statute was developed over many years. The development process was completed in 1947-1948. Under the auspices of the UN Economic and Social Council, activities were carried out for the establishment of this organization. The future statute of the ITO has been in development for several years.

The development process culminated in the United Nations Conference on Trade and Employment in Havana in 1947-1948. This is why the WTO Charter was called the Havana Charter. The Havana Charter was signed by more than 50 countries on 24 March 1949. It was to enter into force after ratification by a majority of the signatories. The United States changed its mind on the ITO statute because it believed that it was advantageous to regulate international trade unilaterally and on a group basis rather than universally. The draft charter of this organisation states that services are the main element of international trade. At the same time, the following services were included in the project: transport services, banking, communication services and insurance.

As part of the preparations for the Havana Conference, 23 countries held their first negotiations on tariff preferences in Geneva. The result of these negotiations was the Final Act of the First Tariff Conference, signed on 30 October 1947, which contained the text of GATT (1947). The text of the General Agreement on Tariffs and Trade entered into force on 1 January 1948. The GATT began the gradual transition from bilateral to multilateral regulation of international trade. The GATT (1947) had only one article on services. Article IV of the agreement dealt with the issue of quotas for the showing of foreign films.

The role of organizations.

In the 1950s, the Organisation for European Economic Co-operation (OECD) worked on the liberalisation of trade in services. A code to liberalise the existing invisible operations with a list of services was developed within its framework. . At that time, in Article 60 of the Treaty of Rome, “service” was defined as an activity carried out for a fee to satisfy the needs of the consumer, unless, as a rule, it is regulated by the rules of free movement of goods, capital or persons . This agreement commits countries not to introduce new restrictions on trade in services (Article 62), to progressively eliminate such restrictions (Article 59), and also commits members to liberalise payments directly related to services.

The Conference on Trade and Development (UNCTAD) was established in 1964 as a subsidiary body of the United Nations. The objectives of UNCTAD are to determine the main

policy directions in the sphere of international trade, economic development, and the promotion of the growth of international trade. The main task of UNCTAD is to promote trade between countries at different levels of socio-economic development .

In its work, UNCTAD pays particular attention to the issue of trade preferences for developing countries. Throughout its existence, UNCTAD has had a significant impact on the development of international trade relations and on the formulation of principles and rules governing international trade in goods and services. The principles of international trade relations and trade policy were adopted at the first session of UNCTAD. In 1989, negotiations under the auspices of UNCTAD resulted in the Agreement on the Global System of Trade Preferences for Developing Countries .

Also, UNCTAD played an important role in the development of international agreements on maritime transport (Convention on Carriage of Goods by Sea, 1978, Convention on International Mixed Carriage, 1980). The United Nations Commission on International Trade Law (UNCITRAL) was established in 1966 to harmonize and unify rules, codify international trade practices, and develop conventions .

UNCITRAL has prepared 2 Conventions in the sphere of unification of international transport regulations: the 1978 Convention on the Carriage of Goods by Sea (“Hamburg Rules”) and the UN Convention on the Liability of Transport Operators.

The United Nations Convention on the Carriage of Goods by Sea established a unified legal framework for the rights and obligations of consignors, carriers, and consignees under a contract of carriage by Sea.

The Second Convention, adopted in 1991, regulates the legal regime in the field of liability of the transport terminal operator for the delay in the delivery of goods, loss or damage during the international transportation process. Later, services were mentioned as issues to be considered in the Tokyo Round of GATT negotiations. Taking into account the increase in the volume of world trade in services, in 1986, at the GATT Ministerial Conference, it was decided to conduct negotiations on trade in services to further develop international rules and principles regulating this trade market, liberalize interstate trade relations, and expand trade. This will help the economic growth of all participants. Thus, following the results of the Uruguay Round of GATT negotiations (1986-1994), it was decided to create the World Trade Organisation, which included the GATS in its set of agreements.

The second zone of the global level is the zone of the International Monetary Fund, which deals with currency and other monetary operations, including payments for the provision of services. The third zone is a regional area of the European Union where the free movement of goods, services, capital, and persons is carried out. The fourth zone is the regional influence of

NAFTA. GATS was the first set of multilateral, legally binding rules on international trade in services. This Agreement includes the main principles and conditions for the liberalization of the service markets of the member states for economic growth and further development of all participating countries.

The preparation for the conclusion of the General Agreement on Trade in Services was a long process. In the 1970s, the United States began to play an important role in the stock market and the trading of derivative financial instruments in the exchange and over-the-counter markets. The problem of developing the theory of the emergence of financial risks and market insurance mechanisms in the world economy arose. Given the vast experience of the United States in this area, American companies have become the main providers of consulting, financial, and auditing services. This led to the establishment and operation of American companies in the markets of other countries. As a result of the development and demand for services in the world market, the United States began to prepare to include the development of general international rules for trade in services on the agenda of multilateral trade negotiations. In 1984, America passed the Trade and Tariff Act, and some of its provisions are very similar to the later GATS .

This law specifically defined the task of increasing the competitiveness of the sector related to trade of services in the world market. A set of international rules for regulating trade in services and settling disputes in this area had to be developed in order to implement this task. Article 305 of the Law states that the purpose of the negotiations on the provision of services is to promote the development of trade in services and to reduce and eliminate existing barriers. In turn, one of the objectives of the GATS is to expand trade in services, and WTO member countries commit themselves to guaranteeing a certain level of access to their domestic market in various service sectors, as set out in national schedules of specific commitments.

The law defines the concept of “trade in services”, and its result is understood as an economic activity other than goods. This definition includes insurance, banking, transportation, retail and wholesale trade, advertising, auditing, construction, architecture, consulting, education, health, and tourism services. The next stage of finalizing the GATS can be considered the beginning of negotiations on the development of relevant international rules for trade in services. It is worth noting that the most important round of negotiations was the Uruguay Round, which for the first time included the issue of regulating trade in services on the negotiating agenda. There have been 7 rounds of negotiations: 1947 (Geneva), 1949 (Annecy, France), 1950 (Turkey, UK), 1956 (Geneva), 1960-1961 (Geneva, “Dillon Round”), 1964-1967 (Geneva, “Kennedy Round”), 1973-1979 (Tokyo and Geneva) .

GATT negotiations and the growing focus on services.

The first rounds of negotiations focused on reducing the level of customs duties on goods. The countries participating in the negotiations mutually agreed on tariff preferences and coordinated them in the list of relevant preferences. The issue of the creation of the European Economic Community was also raised in the Dillon Round negotiations. During the Kennedy Round, agreement was reached on a “linear” reduction in the level of tariffs on industrial goods, and an exception to the principle of reciprocity in favour of developing countries was approved. During the negotiations held in Tokyo, member states agreed on the next round of tariff cuts. Tokyo Round: Agreement on the Implementation of Articles VI, XVI and XXIII of the GATT, Agreement on Technical Barriers to Trade, Agreement on the Implementation of Article VI of the GATT and Article VII of the GATT were adopted .

At the time, the GATT system had several disadvantages:

- 1) From a legal point of view, the General Agreement on Tariffs and Trade did not have an appropriate form, and its existence was based only on the Protocol on the Provisional Application of the GATT;
- 2) There was no appropriate institutional mechanism or dispute settlement body;
- 3) GATT contained a lot of misunderstandings filled with additional agreements, but not all GATT members were parties to these agreements;
- 4) GATT reinforced the principle of the supremacy of domestic legislation of member states over international legal norms;
- 5) The GATT did not apply to all goods. For example, trade in agricultural and textile products was excluded from the GATT;
- 6) GATT did not apply to trade-in services .

Later, the Uruguay Round fundamentally changed the entire GATT system and turned it into the WTO. Most of the shortcomings listed above were eliminated during the negotiations in Uruguay. The subject of the Uruguay Round negotiations included the following issues: reduction and elimination of tariff and non-tariff methods of trade regulation, trade-in textile goods, trade in agricultural products, trade in tropical goods, revision of GATT rules, disputes settlement, subsidies, and countervailing duties, investment rules directly related to trade, intellectual property rules related to trade and trade in services. The Uruguay round was held at the initiative of the USA. In 1984, the US president proposed to start a new round of negotiations. In early 1986, countries agreed on a program and organizational structure for a new eighth round of multilateral negotiations .

In September 1986, Uruguay officially started a new tour. The goals of the Uruguay Round were as follows: liberalization and development of international trade, improvement of the multilateral trade system, and increase in the level of international trade. The Ministers emphasized



the need to adopt uniform international rules and principles for trade in services, noting that specific rules can be developed for some sectors of the services market. Particular attention was given to the need to establish rules that would contribute to the expansion of trade in services based on the principles of openness and progressive liberalisation, as well as to the economic growth and development of all countries participating in the Agreement. The Uruguay Round continued the work of the Tokyo Round and introduced new issues for consideration: the regulation of trade in services, intellectual property issues, and trade-related investment issues.

The Uruguay Round Declaration consisted of two parts, the first part was devoted to negotiations on trade in goods, and the second to trade in services. Negotiations on services were based on GATT procedures and practices. The purpose of the negotiations on trade in services in the Round Declaration was to develop multilateral principles and rules for trade in services, including the creation of specific rules for certain service sectors.

#### Development and principals of GATS.

The final phase is characterized by the beginning of the development of the GATS concept. In 1988, in Montreal, the main provisions of the emerging agreement were agreed. First, the scope of the agreement was agreed. The regulation of trade in services was to cover the cross-border movement of services and consumers. In particular, the main principles of the agreement were established:

- Transparency, i.e. providing necessary information about legal documents, international agreements, and other procedures related to trade in services;
- Gradual liberalization, that is, after the end of the Uruguay Round, the rules of liberalization had to be adopted. At the same time, in developing countries, it was planned to provide a more flexible liberalization regime covering a smaller number of sectors of the service market.
- National treatment, i.e., treatment that is no worse than the export of services from one country to the territory of another country is normally provided to its service providers or services in a similar market.
- Non-discrimination of service providers and services is the most convenient state regime.
- Participation of developing countries.
- Market access is guaranteed based on multilateral rules.

The final stage was the ratification of the GATS. In mid-December 1993, at a meeting of the Trade Negotiations Committee, a complete list of agreements between the countries was announced. But officially, all the documents of the Uruguay Round were adopted by the Ministerial Conference in April 1994. The final document made it possible to sign the agreement on the establishment of the WTO in Marrakesh.



The main distinguishing feature of the final document is that the results of the Uruguay Round are presented in a single set of documents, the adoption of which is mandatory for WTO countries. Recently, services have become the most dynamic segment of international trade. Since 1980, world trade in services has grown faster than the flow of goods.

Developing countries took an important part in this growth. Given the continued pace of global trade in services, most importantly as a result of the proliferation of international supply chains, the need for internationally recognized rules has grown. The General Agreement on Trade in Services (GATS) regulates trade in services, which was the first comprehensive multilateral trade agreement. Its creation was one of the main achievements of the Uruguay Round of trade negotiations from 1986 to 1993. It is the trade counterpart of the GATS, nearly half a century after the General Agreement on Tariffs and Trade (GATT) came into force in 1947.

### **Conclusion**

Summarizing all of the above, it is worth noting that, the main result of the Uruguay Round negotiations was a new level of understanding of the current problems of regulating trade in services at the multilateral level of the participating countries. Countries have entered into negotiations on the development of new multilateral rules for the regulation of spheres, where such rules do not exist. The Uruguay Round significantly increased the activity of the national institutions of the countries on the issues discussed during the negotiations. It contributed to the development of a better understanding of the national interests of each country. The study of the mechanism of international legal regulation is determined by the need to understand the nature of the activity of law as a social regulator and allows it to assess its normative potential.

The formation of legal regulation of social relations at the domestic level and then at the level of interstate interaction is connected with the development of the state and the emergence of the need for a special type of regulatory rule. On this basis, the state becomes the main subject of legislation, establishes legal norms, and makes them generally binding. Using its existing legal instruments it provides for the actualization of the mechanism of international legal regulation, and by its activities it ensures that legal norms are reflected in the actual behavior of the subjects of international legal relations.

We can conclude from the above that the liberalization of international trade in services has been slow in practice. Before the GATS agreement, there were many problems in the international sphere, especially in the sphere of regulation of trade in services. The services market is one of the most heavily state-controlled sectors of the external economy. Trade in services not only creates economic stability in the country, but also contributes to a positive social environment. The General Agreement on Trade in Services was the first international agreement to regulate trade in services.

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